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Conservation Districts: A Solution for the Deanwood Neighborhood?

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“Conservation Districts: A Solution for the Deanwood Neighborhood?”

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Historic Preservation

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I. Introduction

Preserving and protecting home ownership and the affordable housing in the United States remains a serious concern despite numerous federal programs intended to encourage home ownership and to provide affordable housing to low-income individuals and families. Often times, low-income people live in older, run-down neighborhoods in urban areas. There is a constant threat that developers will purchase properties in these areas in order to demolish or renovate existing structures and redevelop the area (this process is often referred to as “gentrification”).

One of the consequences of gentrification is the displacement of low-income residents. In those instances where low-income residents own their own homes, they stand to benefit from rising property values. For those residents who do not own their own homes, displacement can be disruptive and, in high cost areas such as the District of Columbia, finding affordable replacement housing can be difficult.

Many older neighborhoods and their residents could benefit from additional regulatory protections. In some cases, neighborhoods may qualify for the protections provided by a local historic district statute or ordinance. Historic districts, which originated in Charleston, South Carolina in 1931, are used frequently throughout the country to protect historic neighborhoods.¹ The establishment of an historic district in an area tends to contribute to the revitalization of the area. Middle and high-income people often move into revitalized buildings in the area. The revitalization and in-migration contribute to rising property values and rising rents, which, in turn, contribute to displacement of lower income residents.

¹ Stipe, Robert E., “Conservation Areas: A New Approach to an Old Problem,” Issue Paper: Cultural Partnership Notes, 2 (1998).

Historic districts generally require that building owners submit an application to a preservation commission for permission to construct new buildings or to demolish, alter or construct additions to existing buildings.² Typically, the standards under historic district legislation are strict and may require expensive upkeep of properties. In low-income neighborhoods, the added costs imposed by such a regulatory burden may make it more difficult for families to afford to remain in their neighborhoods.

Over the past twenty years, conservation districts have emerged as an alternative means of protecting the character of neighborhoods, including the historic elements of neighborhoods. Cities such as Phoenix, Arizona and Philadelphia, Pennsylvania have adopted legislation which permits the creation of conservation districts in order to increase or preserve the supply of affordable housing and revitalize neighborhoods. Currently, the City of Washington, D.C. has historic preservation legislation, but does not have conservation districts.³ Given the historic nature of Washington as the nation's capital, the large low-income population in the City, and the considerable amount of development (particularly gentrification) that has occurred in Washington over the past 25 years and is continuing to occur, it is of vital importance to protect structures that contribute to the City's history, as well as to maintain affordability for low-income individuals and families.

This paper will examine (i) the Phoenix, Arizona and Philadelphia, Pennsylvania conservation district legislation as a possible model for the use of conservation districts to preserve affordable housing in Washington and (ii) focus on the possible use of a conservation

² Miller, Julia H., "A Layperson's Guide to Historic Preservation Law: A Survey of Federal, State, and Local Laws Governing Historic Resource Protection," *National Trust Publication*, 13.

³ See DC Code § 2-144 (as amended) (2006).

district in the Northeast neighborhood of Deanwood, as an alternative to an historic district, as a means to protect historic structures and affordable housing.

II. Conservation Districts.

A. What is a Conservation District? Conservation District Defined.

Although there is no formal, established definition of “conservation district,” the prevailing view is that conservation districts “offer a means to recognize the special historic and/or neighborhood character, and provide planning assistance and improvement without passing through the often arduous process of historic designation and design review.”⁴ Under this approach, the major difference between an historic district and a conservation district is that there tends to be more of a focus on preserving community character than preserving historic fabric.⁵ In practice, local conservation district laws tend to take this approach, and, while protection schemes vary markedly, many jurisdictions have development controls similar to those under historic district ordinances.⁶

Robert E. Stipe, a Professor of Design, at North Carolina State University, describes a conservation district as an area that “possesses form, character and visual qualities derived from arrangements or combinations of topography, vegetation, space, scenic vistas, architecture, appurtenant features, or places of cultural significance that create an image of stability, comfort, local identity and livable atmosphere,” where the “city or county imposes upon itself a special responsibility to undertake ambitious specifically defined planning and design tasks targeted to

⁴ Zellie, Carole, “A Consideration of Conservation Districts and Preservation Planning: Notes from St. Paul, Minnesota,” Issue Paper: Cultural Partnership Notes, 8 (1998).

⁵ Miller, Julia H., “Protecting Older Neighborhoods Through Conservation Districts,” National Trust Publication, 1, (2003).

⁶ *Id.*

the maintenance and improvement of the area so designated.”⁷ In Stipe’s view, existing land use regulations remain in effect and there is no architectural review of additions or new construction and no restrictions on demolition.⁸ The additional governmental involvement in these areas is in the form of incentives rather than additional regulations, and the local government would be responsible for taking appropriate steps to preserve land-use and provide services.⁹

Most laws governing private actions affecting the preservation of historic resources are enacted at the local level through historic preservation ordinances.¹⁰ Preservation ordinances vary widely from place to place because of various political factors and different community circumstances and goals.¹¹ Generally, local ordinances create preservation commissions which are administrative bodies responsible for granting or denying a certificate of appropriateness so that owners may obtain a building permit.

Historic properties may be individual properties or properties within designated historic districts. Historic district laws typically protect the exteriors of historic properties and require a certificate of appropriateness where the owner seeks to alter, demolish, move, or construct additions to existing buildings or construct new buildings.¹² It is often perceived by the community at large that historic districts impose heavy burdens on their residents and property owners.¹³ As a result, dozens of local jurisdictions have started to turn to “conservation districts” over the past twenty years.¹⁴

⁷ Stipe, Robert E., “Conservation Areas: A New Approach to an Old Problem,” Issue Paper: Cultural Partnership Notes, 2 (1998).

⁸ *Id.*

⁹ It is within the local government’s jurisdiction to determine the form of the conservation district.

¹⁰ Miller, Julia H., “A Layperson’s Guide to Historic Preservation Law: A Survey of Federal, State, and Local Laws Governing Historic Resource Protection,” *National Trust Publication*, 11.

¹¹ *Id.*

¹² *Id.* at 12.

¹³ This perception may differ from reality since historic districts can include guidelines which are flexible enough to ease these “heavy burdens.” However, perceptions are important, particularly in a political process, and there may

Areas that are good candidates for conservation districts include: (i) transitional areas located adjacent to historic districts; (ii) areas that do not yet meet the standards required for historic district designation, but may qualify at a later date; and (iii) areas that have one or more characteristics that require special protection in order to preserve, such as the residential character of an area or the affordable housing in the area; and (iv) areas where property owners are unable or unwilling to meet the requirements applicable to historic districts. Current zoning laws may not provide the necessary protection because zoning review boards do not take into consideration the nature of the historic architecture and compatibility and may not be able to adequately protect the specific characteristics of neighborhoods.

Generally, a conservation district will have a particular preservation or conservation goal. There are three recognized models for conservation districts: (i) the Historic Preservation Model, (ii) the Neighborhood Planning Model and (iii) the Hybrid Approach.¹⁵ As discussed below, if the District of Columbia were to adopt conservation district legislation, the Hybrid Approach would be the most effective for use in Deanwood.

1. The Historic Preservation Model.¹⁶

The Historic Preservation Model focuses on preserving physical attributes of a neighborhood by regulating changes that could affect architectural character. Neighborhoods that are best suited for this type of protection tend to be older and may or may not qualify for

be concerns from “both sides” about the use of “flexible guidelines.” Property owners may fear that the guidelines will be construed and enforced so as to strongly favor historic preservation, while strong advocates of historic preservation may perceive the flexibility as a vehicle to dilute preservation in the subject and other historic districts.

¹⁴ Stipe, Robert E., “Conservation Areas: A New Approach to an Old Problem,” Issue Paper: Cultural Partnership Notes, 2 (1998).

¹⁵ Miller, Julia H., “A Layperson’s Guide to Historic Preservation Law: A Survey of Federal, State, and Local Laws Governing Historic Resource Protection,” *National Trust Publication*, 2-5.

¹⁶ Cities that have adopted the Historic Preservation Model include Nashville, Tennessee and Cambridge, Massachusetts. “Sample Conservation District Ordinance Provisions,” 21 *Preservation Law Reporter*, 1059, 1072, 1092 (2002-03).

historic district designation. Often there is a lack of neighborhood support for stricter controls. Under this approach, design standards are typically more lenient than in an historic district for both existing properties and new construction. However, these laws typically require review of demolition, alteration and new construction. This model is often found in jurisdictions that already have a historic district program in place.¹⁷

2. The Neighborhood Planning Model.¹⁸

The Neighborhood Planning Model focuses on preserving a neighborhood's unique characteristics. This model is typically implemented by controlling matters which may be ordinarily addressed in zoning and planning laws. Under this model, neighborhoods can be protected from intensive or inappropriate development. Through careful planning and high levels of neighborhood support, goals can be developed to preserve neighborhood character and, in some circumstances, affordable housing. Under this model, the local government may or may not require a review of demolition, alteration or new construction.¹⁹ In general, the level of protection and focus on the specific goals of protection will likely be lower under the Neighborhood Planning Model.

3. The Hybrid Approach.²⁰

Some jurisdictions have used elements of both the Historic Preservation Model and the Neighborhood Planning Model in order to incorporate both preservation-based and planning-based goals into conservation districts.

¹⁷ Miller, Julia H., "Protecting Older Neighborhoods Through Conservation Districts," National Trust Publication, 2, (2003).

¹⁸ The Neighborhood Planning Model has been adopted in Phoenix, Arizona and Boise, Idaho. 21 *Preservation Law Reporter*, 1059, 1060 (2002-03).

¹⁹ Miller, Julia H., "Protecting Older Neighborhoods Through Conservation Districts," National Trust Publication, 3-4, (2003).

²⁰ Examples of the Hybrid Approach can be found in Philadelphia, Pennsylvania, Dallas, Texas and Boulder, Colorado. 21 *Preservation Law Reporter*, 1059, 1066, 1086 (2002-03).

B. Conservation District or Historic District?²¹

There are several differences between regulating neighborhoods through a conservation district law rather than an historic district law, including the following:

1. Conservation districts are a useful planning tool. Conservation districts can offer a useful alternative to an historic district where an historic district is not the most appropriate method of regulation. For example, where a neighborhood fails to meet the requirements of an historic district, but protection is necessary to preserve the area's distinctive character, and the area might qualify for historic district designation in ten to fifteen years. In some neighborhoods, the support for an historic district may be lacking, but the residents could be convinced that some protection is warranted in order to avoid incompatible development or demolition.²²

2. Broader range of goals: the protection of affordable housing. Historic district laws, by their very nature, are focused on historic preservation. Conservation district laws, while able to address historic preservation, can also be used to address a variety of other planning goals, ranging from the preservation of natural resources to the preservation of affordable housing.

Historic districts are often viewed as a tool for neighborhood revitalization since there are often tax and other economic incentives provided for the rehabilitation of historic structures, as well as government-funded infrastructure improvements such as streetscapes and parks.

According to Carol Rose, a Yale Law School Professor, “[t]he displacement of low-income residents... may be the albatross of the modern historic preservation movement, evoking as it

²¹ To some extent, any distinctions between historic district laws and conservation district laws are artificial since characteristics normally associated with conservation district laws could be incorporated into historic district laws and *vice versa*. Therefore, the comparisons contained in this section are based largely upon the characteristics typically found in historic district and conservation district laws.

²² Miller, Julia H., “Protecting Older Neighborhoods Through Conservation Districts,” National Trust Publication, 5, (2003).

does the overtones of snobbery and special interest that have long dogged preservationists.”²³

The targets of historic district designation are often older neighborhoods with a low-income population. Cities designate historic districts for a variety of reasons, often (at least in part) as tourist attractions (for example the Vieux Carre in New Orleans, Louisiana or Georgetown in Washington). Cities are also motivated to attract businesses which create jobs and pay taxes and to attract middle and upper income residents.

As a result, there is often a large displacement of low-income residents in areas which receive historic district designation.²⁴ Conservation districts allow particular goals to be set, such as the preservation of affordable housing, thereby using regulation to discourage rather than encourage displacement. However, particularly in those conservation districts where preservation of affordable housing is not a specific goal, many of the factors which result in the displacement of existing low-income residents in an historic district may result in similar displacement in a conservation district.

3. Public Participation. Historic district laws and conservation district laws include varying levels of participation in both the creation of the district which will be subject to regulation as well as the administration of such regulation. Typically, conservation district laws require that a certain percentage of property owners approve or (at least not object to) the creation of a district in the area before the local government will approve it.

Public participation requirements in conservation district ordinances range from neighborhood advisory committees to having a certain percentage of owner support (as high as

²³ Rose, Carol M., “Preservation and Community: New Directions in the Law of Historic Preservations,” 33 Stan. L. Rev. 473, 478 (1980-1981).

²⁴ *Id.* at 512-14.

sixty percent in Boulder, Colorado's ordinance).²⁵ In contrast, historic district designation is generally under the jurisdiction of historic preservation commissions and typically does not require the same level of public support or neighborhood involvement.²⁶

Significant resident participation fosters a sense of "place" and can convey a sense of community or pride in visual surroundings.²⁷ Particularly in low-income neighborhoods, resident participation can act as a catalyst to political involvement and pride in one's neighborhood. In most federally subsidized housing programs, there is a strong emphasis on resident and community member participation.²⁸ By facilitating significant resident participation, both historic district and conservation district laws encourage members of the community to take care of their neighborhoods and to take an active role in their communities.

4. Development and design related controls. Failure to adequately protect historic structures. Conservation districts are a means to implement the types of protections and controls that are most beneficial to an area, taking into account the specific needs of the area.²⁹ Individual conservation districts can be tailored to include incentives and restrictions designed to meet the needs of the area. A conservation district may impose lesser design burdens than those imposed in an historic district in order to make it more feasible for individual residents to maintain their properties while preserving existing structures.³⁰ For example, conservation districts may permit

²⁵ Boulder, CO., Land Use Code § 4-118(J) (2007).

²⁶ However, historic preservation commissions are likely to seek owner input and support since without such support it is difficult to successfully implement historic district restrictions, and the commission runs the risk of undermining the legitimacy of local historic district legislation.

²⁷ Rose, Carol M., "Preservation and Community: New Directions in the Law of Historic Preservations," 33 Stan. L. Rev. 473, 483 (1980-1981).

²⁸ Federal programs such as HOPE VI, Section 24 of the United States Housing Act of 1937, and Section 202 of the National Housing Act of 1959 require resident participation. 42 U.S.C. § 1437v (2007); 12 U.S.C. § 1701q (2007).

²⁹ Miller, Julia H., "Protecting Older Neighborhoods Through Conservation Districts," National Trust Publication, 5, (2003).

³⁰ Although historic districts could be established on terms which impose comparable guidelines, most historic district laws do not provide such flexibility. Creating such flexibility in historic districts may create problems. See *supra* Footnote 13.

the installation of less expensive replacement windows to provide for energy efficiency even though such windows are not historically accurate and would not be permitted in an historic district. However, by facilitating the preservation of the structure there is an opportunity to install more expensive historically accurate windows at a later date should the area subsequently become an historic district.

The most significant problem with conservation districts is their inability to strictly protect the historic fabric of structures. Typically, conservation district ordinances do not protect structures from alterations and demolition to the same extent as historic districts. As a result, historic structures may be altered in ways that significantly and permanently change their historic meaning or may be destroyed all together.³¹ In addition, where there are limitations on demolition or alterations of existing buildings and the construction of new buildings, if the review and permitting process is not conducted by qualified and experienced professionals, poor decisions may result and historic structures may not receive adequate protection.³²

Conservation districts place restrictions on new development which are in addition to those imposed by zoning laws. Conservation districts may require that new construction be compatible with existing structures as far as the mass of the structure, the architecture, the materials used and property setbacks. Neighborhoods may be concerned with protecting the residential character of the area and avoiding massive redevelopment.³³ By controlling new development in a conservation district, the area's character can be preserved until it is ready to become an historic district.

³¹ *Id.*

³² *Id.*

³³ *Id.*

On the other hand, due to more stringent regulation and the attendant increases in costs, conservation districts may limit beneficial new development. Furthermore, restrictions requiring compatible development may stifle the creativity of architects seeking cutting edge and improved methods of design.

C. Conservation District Ordinances.

Typically, the authority to enact conservation district ordinances is granted in one of the following ways: (a) historic preservation enabling laws, (b) an express delegation of authority, for example from a city council or other local commission, or (c) a broad grant of zoning authority.³⁴ Where no additional regulatory requirements are imposed on residents, it is arguable that no additional authority is necessary and preexisting planning laws are likely sufficient.³⁵ With respect to existing zoning already in place, a conservation district may be established as an overlay or a stand-alone district. An overlay district places restrictions and/or conditions in addition to those already in place by the existing zoning laws. A stand-alone district combines the underlying zoning restrictions and/or conditions with the goals of an overlay to form a single district.

Cities throughout the country (including Phoenix, Arizona, Philadelphia, Pennsylvania, San Francisco, California, Nashville, Tennessee, Cambridge, Massachusetts, Boise, Idaho, Boulder, Colorado and Dallas, Texas) have enacted conservation district legislation. Conservation districts vary greatly in each place depending in large part upon the attributes the district is intended to protect.

³⁴ Miller, Julia H., "Protecting Older Neighborhoods Through Conservation Districts," National Trust Publication, 6, (2003).

³⁵ Stipe, Robert E., "Conservation Areas: A New Approach to an Old Problem," Issue Paper: Cultural Partnership Notes, 6 (1998).

For example, the Phoenix municipal code provides for “special planning districts.”³⁶ According to Julia Miller, an attorney at the National Trust for Historic Preservation, the specific objective in Phoenix is “to increase or preserve the supply of affordable housing.”³⁷ “Each plan includes specific measures designed to improve the overall character of an area by, among other things, encouraging the remodeling of existing buildings and compatible new development on vacant lots, identifying necessary zoning changes and areas requiring public investment, and addressing the need for specific social services.”³⁸ The purpose statement in the ordinance also suggests that the special planning districts are intended to protect affordable housing.³⁹

On June 3, 2004, the Philadelphia City Council passed Bill 040156 amending Title 14 of the Philadelphia Code, to add a new chapter providing for the creation of “neighborhood conservation districts.”⁴⁰ In such districts, certificates of compliance are required to alter, demolish or construct a building.⁴¹ According to Martin Gregorski, a City Planner with the Philadelphia City Planning Commission, the purpose of neighborhood conservation districts in Philadelphia is to protect a neighborhood’s character, whatever that character may be.

Although the purposes of conservation districts and ordinances vary widely from jurisdiction to jurisdiction, the ordinances tend to incorporate the following elements: (i) a statement of purpose; (ii) an administrative review body; (iii) procedures setting forth how a

³⁶ “Sample Conservation District Ordinance Provisions,” 21 *Preservation Law Reporter* 1059, 1099 (2002-03).

³⁷ Miller, Julia H., “Protecting Older Neighborhoods Through Conservation Districts,” National Trust Publication, 2, (2003). Katherine Coles, a planner with the Phoenix Planning Office, explained that, although Special Planning Districts were originally created in the 1980s and early 1990s to protect low and middle income neighborhoods from incompatible development and to form a united front to protect neighborhoods from the development of interstate highways, the law has not succeeded in preserving affordable housing. In the face of one of the fastest growing housing markets in the country, and a statewide proposition that has severely limited property regulation after *Kelo v. City of New London, Conn.*, 545 U.S. 469 (2005), the Phoenix ordinance has not succeeded in preserving affordable housing.

³⁸ *Id.*

³⁹ See *infra* Purpose p. 13.

⁴⁰ To date, there have been no neighborhoods designated as conservation districts in Philadelphia.

conservation area is designated; (iv) actions subject to review; (v) the review process; (vi) enforcement procedures and (vii) an appeals process.⁴² After such enabling ordinances are enacted, individual conservation districts may be established.

1. Statement of Purpose

The statement of purpose is typically a list of public purposes that the conservation district is intended to serve including: (a) neighborhood character, (b) discouragement of demolition, (c) plans for new development, (c) investment and economic development and (d) community expectations and goals.⁴³ For example the statement of purpose for conservation districts (called “Special Planning Districts”) in the Phoenix Zoning Ordinance is as follows:

The Special Planning District is intended as a means for property owners to initiate and implement programs for the conservation or revitalization of neighborhoods. The district takes effect through the adoption of a precise plan and set of regulations, called the special district plan, specifically intended, in each case, to facilitate maintenance and upgrading of the neighborhood, to encourage development of vacant or under-used lots, to ameliorate the adverse effects of incompatible mixtures of uses, and to encourage neighborhood residents and owners to take positive steps for the improvement and orderly development of the neighborhood.⁴⁴

The Philadelphia Planning Code lists ten “Findings and Purposes” with respect to conservation districts, among the findings are references to the unique historical nature of the City of Philadelphia and the “economic and social forces” that threaten the fabric of neighborhoods.

The list of “Findings and Purposes,” in pertinent part, and which include the following:

(6) The public welfare of the City [of Philadelphia] will be promoted by encouraging conservation and preservation through the revitalization of these distinctive residential neighborhoods for all of Philadelphia and its residents.

⁴¹ City of Philadelphia City Council, Press Release Bill 040156, *available at* <http://www.phila.gov/citycouncil/bills/prelease.asp?id=316> (last visited May 5, 2007).

⁴² Miller, Julia H., “Protecting Older Neighborhoods Through Conservation Districts,” National Trust Publication, 6, (2003).

⁴³ *Id.* at 5-6.

⁴⁴ Phoenix, AZ, Zoning Ordinance, § 402(1) (2007).

(7) It is necessary to provide a reasonable degree of control over the alteration and improvement of the exterior of facades of existing buildings and the design of new construction located in a designated Neighborhood Conservation District to preserve the aesthetic fabric of these distinctive Philadelphia neighborhoods.

(8) The purpose... is the strengthening of Philadelphia neighborhoods to enhance the City's attractiveness as a place to live, work and enjoy its cultural, social and historical opportunities and also to foster a renewed feeling of pride in one's neighborhood.

(9) The further purpose... is to compliment and supplement the goals of the City Planning Commission, the Philadelphia Historical Commission, and the Neighborhood Transformation Initiative, as they all seek to develop, revitalize, and conserve the many diverse and historic neighborhoods of the City [of Philadelphia].⁴⁵

2. Administrative Review Body.

The body responsible for administering conservation districts is typically a historic preservation commission, a zoning or planning commission or a specifically designated neighborhood commission.⁴⁶ It is not unusual in jurisdictions where there is historic district legislation for the historic preservation commission to administer the historic districts and conservation districts.

In Phoenix, conservation districts are administered by the Planning Department. In Philadelphia, conservation districts are also administered by the Planning Department which issues Certificates of Compliance. Certificates of Compliance are then subject to review and approval by the Planning Commission. When asked why the Planning Department is responsible for neighborhood conservation districts in Philadelphia, Martin Gregorski, a City Planner with the Philadelphia City Planning Commission, responded that, when the City Council passed Bill 040156, the City Council assigned responsibility to the Planning Department because it did not know who else to give responsibility, and the Planning Department had the available staff.

⁴⁵ Philadelphia, PA, Planning Code, § 14-901 (2007).

⁴⁶ Stipe, Robert E., "Conservation Areas: A New Approach to an Old Problem," Issue Paper: Cultural Partnership Notes, 7 (1998).

3. Designation Process.

Once conservation district enabling legislation is in place, applications can be made to establish conservation districts. Individual ordinances vary widely from jurisdiction to jurisdiction with respect to what is required in order to establish a conservation district. Generally, the process for obtaining conservation district designation is similar to historic district designation. Typically a neighborhood will be required to (a) meet specified criteria for designation, (b) complete an application process and (c) develop a neighborhood plan. In order for a neighborhood to be designated a conservation district, ordinances typically require significant property owner participation and approval.⁴⁷

The criteria for obtaining Special Planning District status in Phoenix are loosely defined, but the ordinance requires significant property owner participation and approval. In order to initiate the designation process, a petition requesting the establishment of the district must be signed by at least fifty percent of the property owners within the proposed area and delivered to the Planning Commission. A citizens' committee must be formed for the purpose of circulating the petition and working with the Planning Commission.⁴⁸

The Planning Commission will then hold a public hearing in order to explain the purpose and operation of a Special Planning District, to determine the degree of interest among the property owners and receive suggestions regarding the content of the special district plan. The Planning Commission will then make a recommendation to the City Council which may concur with the Planning Department or specify other recommendations.⁴⁹

⁴⁷ As noted above, property owner participation and approval may, but need not, be greater than that provided for in the historic district designation process.

⁴⁸ Phoenix, AZ, Zoning Ordinance, § 402(2)(a).

⁴⁹ *Id.* at § 402(2)(b).

After received instructions from the City Council, the Planning Commission must prepare a special district plan in accordance with direction from the citizens' committee which specifies land use restrictions, regulations for remodeling existing buildings and structures, proposals for social services to be furnished in the area, and plans for capital improvements by public agencies and utilities in the area.⁵⁰ After completion of the plan, it must be distributed to all property owners and put to a vote. The Planning Commission will then make a recommendation to City Council which will hold a public hearing where it may approve, deny or modify the Special Planning District.⁵¹

Philadelphia's neighborhood conservation district ordinance, on the other hand, requires specific criteria to be met in order for a neighborhood to receive designation. In order to be eligible for designation, (a) the area must adopt the guidelines under Section 14-904 of the Philadelphia Zoning Code which requires review of plans to alter or demolish existing buildings and to build new construction, (b) the size of the area must be at least two blocks by two blocks, (c) at least seventy percent of the area must be of residential use and zoned residential and no more than twenty percent of the area may consist of vacant lots or vacant buildings and (d) the City Council must find that the area possesses a "consistent physical character."⁵²

If a neighborhood meets these criteria, it may then initiate the designation process by submitting a petition request to the Planning Commission. The request must either be in the form of a petition signed by at least thirty percent of the property owners in the area or from a duly authorized neighborhood association.⁵³ The Planning Commission will then draft design

⁵⁰ *Id.* at § 402(2)(c).

⁵¹ *Id.* at 402(2)(d).

⁵² Philadelphia, PA, Planning Code, § 14-903(1)-(5).

⁵³ According to Martin Gregorski, there are no specific requirements, such as how many residents must participate, for neighborhood associations. *See id.* at § 14-903(5).

guidelines and prepare an enabling ordinance that it will submit to the neighborhood's Councilpersons.⁵⁴ The design guidelines will also be submitted to the Planning Commission and the Historical Commission, each of which will then make a recommendation to the City Council which in turn, may approve, deny or revise the proposed guidelines.⁵⁵

The Philadelphia ordinance does not require the extent of community participation at the outset as required in the Phoenix ordinance. However, the Philadelphia ordinance does provide that the City Council may not create a Neighborhood Conservation District if at least fifty-one percent of all property owners or fifty-one percent of all owners of owner-occupied housing units in the affected area timely file a statement in writing with the Clerk of Council in opposition to the creation of the district.⁵⁶

4. Actions Subject to Review.

The determination of which actions are subject to review is particularly important in order to successfully carry out the goals of the conservation district. In general, the areas regulated under a conservation district are set forth in an individual neighborhood plan, and in the enabling ordinance as is the case in both Phoenix and Philadelphia. Therefore, each individual community has the opportunity to set forth its own goals and requirements within the parameters of the enabling ordinance.

Typically, the actions subject to review are the demolition or alterations of existing structures and construction of new buildings. The Philadelphia ordinance mandates that any

⁵⁴ *Id.* at § 14-903(6).

⁵⁵ *Id.* at § 14-903(8).

⁵⁶ *Id.* at § 14-903(9).

neighborhood plan require that such actions be reviewed before a building or demolition permit will be granted.⁵⁷ However, the Phoenix ordinance does not include such a requirement.

Provisions defining the actions subject to review can be very controversial. On the one hand, some critics argue that requiring permits for alterations, demolitions and permits may be imperative to protect the historic nature of the structures within the district and encourage compatible development. On the other hand, these types of reviews may appear to be quite similar to the requirements under historic district legislation which can be costly and may conflict with the implied presumption against such regulation in conservation districts.⁵⁸ In many instances, the distinction between an historic district and a conservation district may be focused more on the standard of review, rather than the actions which are subject to review.

5. The Review Process.

The review process under conservation district laws tends to be similar to that used in historic district laws. Where an owner seeks a building permit or demolition permit, it would be required to submit an application to the appropriate commission for a certificate of appropriateness. If the work is minor or outside of the scope of the conservation district, the owner may get a certificate of non-applicability or certificate for minor work. A certificate of hardship may also be issued where a denial of a certificate of appropriateness would effectively deny “reasonable or beneficial” use of the property.⁵⁹ The Philadelphia ordinance provides for this type of review process. It is notable that the certificate of appropriateness is submitted to the

⁵⁷ *Id.* at § 14-903(1).

⁵⁸ Stipe, Robert E., “Conservation Areas: A New Approach to an Old Problem,” Issue Paper: Cultural Partnership Notes (1998).

⁵⁹ Miller, Julia H., “Protecting Older Neighborhoods Through Conservation Districts,” National Trust Publication, 15, (2003).

Planning Commission which may then consult with the Historic Commission.⁶⁰ The Phoenix ordinance does not address review because it is up to an individual neighborhood plan as to what actions will be reviewed and how such review will be conducted.

6. Enforcement

Without the ability to enforce the requirements under conservation district ordinances, the ordinance is of little value.⁶¹ For example, in Knoxville, Tennessee a landowner was fined at a rate of \$100 per home he razed in violation of the applicable local ordinance.⁶² Without sufficient penalties, owners will be inclined to ignore the ordinance altogether. More appropriate penalties may include daily fines and reconstruction requirements. The Philadelphia ordinance, for example, provides that:

- (1) Whenever any building is erected, altered, demolished, used or maintained in violation this Chapter [Neighborhood Conservation Districts], the Department may serve a written notice of such violation upon the violator directing compliance within such reasonable period of not less than ten (10) days as the Department shall determine.
- (2) After the expiration of the time for compliance as stated in the notice of violation, if the violation is not corrected and no appeal is pending, the Department, in addition to invoking any other sanction or remedial procedure may: (a) itself or by contract correct the violation and/or order the termination of such maintenance or use, charge the cost thereof to the person responsible thereof, and with approval of the Law Department collect such cost by lien and/or otherwise as may be authorized by law; (b) apply with the approval of the Law Department to any Court of Common Pleas for relief by injunction or restraining order.
- (3) In addition to any other sanction or remedial procedure provided, the penalty for violation of any provision of this Chapter [Neighborhood Conservation District] is a fine not exceeding one hundred (\$100) for each offense. Each day a violation continues shall be deemed a separate offense for which a separate penalty may be imposed.⁶³

⁶⁰ Philadelphia, PA, Planning Code, § 14-906.

⁶¹ The Phoenix Ordinance does not provide for enforcement.

⁶² Miller, Julia H., "Protecting Older Neighborhoods Through Conservation Districts," National Trust Publication, 16, (2003).

7. Appeals.

Appeals from decisions made by the appropriate commission are typically to either a board of appeals, a legislative body, such as city council, or directly to a court. In the Philadelphia ordinance, appeals of decisions with respect to Certificates of Compliance are made to the Board of License and Inspection Review, which may review the Planning Commission's decision or grant an exemption from the requirements of the ordinance on the basis of unnecessary hardship.⁶⁴

III. The Deanwood Neighborhood

A. The History of Deanwood.

Deanwood is “an historically stable, self-reliant, self-sufficient and close-knit primarily African-American community.”⁶⁵ In 1987, the first historic survey of Deanwood's history and of its structures was completed. The survey area is bounded by Eastern Avenue, Division Avenue, Hayes Street, Nannie Helen Burroughs Avenue and the railroad tracks (the “survey area”).⁶⁶ The land that comprises present-day Deanwood was a land grant in 1703 to Ninian Beall, one of the District of Columbia's largest eighteenth century landholders. Most of the land was eventually purchased by William Benning and was sold after he died to Levi Sheriff. Levi Sheriff was the largest landholder (approximately 524 contiguous acres) in Deanwood. In 1838, James H. Fowler purchased 83 ¼ acres from the descendants of Ninian Beall.⁶⁷ Both Sheriff and

⁶³ Philadelphia, PA, Planning Code, § 14-907.

⁶⁴ Philadelphia, PA, Planning Code, § 14-906.

⁶⁵ “Deanwood: A Model of Self-Sufficiency in Far Northeast Washington, D.C.,” *Deanwood History Project*, 1, (2005).

⁶⁶ “Final Report of Historical and Building Investigation of Northeast Washington, D.C. Community of Deanwood,” Far East Community Services, Inc., 3, September 30, 1987.

⁶⁷ *Id.* at 11-12.

Fowler depended upon slave labor.⁶⁸ According to family records, Sheriff owned nineteen slaves.⁶⁹ When Sheriff died in 1853, this land was left to his three daughters, including Mary Cornelia and her husband John T.W. Dean.

The Civil War marked the beginning of the decline of Deanwood. The principle routes to and from Deanwood became military stop points where all persons entering the City of Washington were checked for identification and contraband. The military removed many trees in the survey area. In 1862-63, all slaves living in the District of Columbia were emancipated.⁷⁰

In 1871, the Southern Maryland Railroad Company laid tracks through the Sheriff's farm. At around the same time, the three Sheriff daughters started subdividing the land. Suburbs were springing up all over Washington and, with the newly arrived public transportation, it perhaps made sense for Deanwood to become a suburb.⁷¹

As early as 1880, the United States Census points toward a trend away from agriculture in the survey area. However, building permits indicate the slow growth of subdivisions within Deanwood. Around 1888, the area was given the name Deanwood, after Mary Cornelia Dean's son Dr. Julian Dean. The United States Census in 1900 depicted Deanwood as a racially mixed area that included the old family farms as well as newly arrived residents. The racial mix lasted as farm owners continued to subdivide their land and persisted until around 1920 when the area became predominantly African-American.⁷² Deanwood remained a semirural area until after World War II, and has remained largely isolated ever since.⁷³

⁶⁸ Overbeck, Ruth Ann, "Deanwood," in Kathryn S. Smith, ed., *Washington at Home: An Illustrated History of Neighborhoods in the Nation's Capital* (Northridge, CA: Windsor Press, 1988), 150.

⁶⁹ *Id.*

⁷⁰ "Final Report of Historical and Building Investigation of Northeast Washington, D.C. Community of Deanwood," Far East Community Services, Inc., 13-14, September 30, 1987.

⁷¹ *Id.* at 14.

⁷² *Id.* at 15-17.

⁷³ *Id.*

The structures in Deanwood were built by both black and white unskilled laborers and skilled craftsmen. Family members passed down their skills to other members of the family or other members of the nearby black community.⁷⁴ Community members assisted one another in building their homes. The designs for the homes in Deanwood may have come from white men with no formal architecture training or designs from pattern books such as “Ladies Home Journal” or by ordering pre-fabricated housing from Sears, Roebuck and Co.⁷⁵ Black architects, including, W. Sidney Pittman, the son-in-law of Booker T. Washington, also contributed to Deanwood’s housing.⁷⁶

Deanwood provided homeownership opportunities for African-Americans in Washington. Typically, it was very difficult for African Americans to obtain home loans. However, Deanwood was a market controlled by white investors that sold homes in exchange for monthly payments.⁷⁷ As a result, many of the homes have stayed in the family of the original owners’ for several generations, and remain in the same family even today.⁷⁸

B. Architectural Character of Deanwood.⁷⁹

The general character of Deanwood is residential. According to the Deanwood Survey Database, published January 1, 1989, most of the structures were built between 1900 and 1950. The Deanwood survey area has no high-style buildings. Most of the buildings are modest single family and semi-detached dwellings created for working class homeowners. The range of styles

⁷⁴ Overbeck, Ruth Ann, “Deanwood,” in Kathryn S. Smith, ed., *Washington at Home: An Illustrated History of Neighborhoods in the Nation's Capital* (Northridge, CA: Windsor Press, 1988), 154.

⁷⁵ “Final Report of Historical and Building Investigation of Northeast Washington, D.C. Community of Deanwood,” Far East Community Services, Inc., 18, September 30, 1987.

⁷⁶ *Id.* at 19.

⁷⁷ *Id.* at 21.

⁷⁸ Overbeck, Ruth Ann, “Deanwood,” in Kathryn S. Smith, ed., *Washington at Home: An Illustrated History of Neighborhoods in the Nation's Capital* (Northridge, CA: Windsor Press, 1988), 155.

⁷⁹ See Appendix A.

include folk Victorian and shingle, neoclassical, colonial revival and prairie derivative, craftsman and Tudor. The variations of the style are diverse.

C. Deanwood Issues.

Deanwood's location in the very far northeast corner of the District of Columbia had an isolating effect. It was not until the 1950s that the District provided services such as paved streets, sewers and sidewalks (in some areas). The isolation and a lack of services contributed to social problems that are common in low-income neighborhoods.⁸⁰ According to Patsy Fletcher, Community Liaison for the DC Office of Planning, and Kiya Chatmon, a community activist, there are several problems plaguing the Deanwood community, including protecting the historic structures in the neighborhood, the need for more community services such as additional sidewalks and garbage removal, incompatible development, a lack of retail business and the need to protect affordable housing.

There are numerous historic structures in the Deanwood neighborhood that probably would not qualify for the National Register of Historic Places. Without protection, these structures are subject to demolition or alteration that would result in the permanent loss of the buildings or the historic integrity of the building. Given the importance of this neighborhood to African-American history, the loss of the historic structures would be devastating.⁸¹

Unlike Northwest Washington, where there is virtually no vacant land available for development, there are many vacant lots in Deanwood. Many of the vacant lots have become

⁸⁰ *Id.* at 156.

⁸¹ African-American community leaders have launched a fight to preserve historically African-American neighborhoods. Leaders argue that the gentrification of American inner cities amounts to a "21st-century 'Negro removal program.'" *Group Seeking Ways to Preserve Inner-City African American Neighborhoods*, Community Development Digest, April 17, 2007. Therefore, it is important to preserve the remaining African-American historic areas.

trash dumps.⁸² In other cases, vacant lots have been sold to developers who have erected structures without building permits (often literally in the middle of the night) or have erected tall structures that comply with current zoning laws, but are architecturally incompatible with the historic structures in the area.

There are also many vacant buildings that used to be the commercial center of Deanwood. The Strand Theatre and surrounding buildings remain empty, as well as the old retail buildings on Sheriff Road.⁸³ There are only two restaurants in Deanwood and virtually no shops.

The residents of Deanwood are also worried that the area will no longer remain affordable if there is the type of gentrification that there has been in many other areas of Washington such as the U Street Corridor and the Shaw and Howard neighborhoods. The increase in housing prices in those areas have driven many in search of home ownership to Deanwood. Most of the structures in Deanwood are owner-occupied homes. According to Ms. Chatmon, the current average price for a single-family home is approximately \$225,000.00. The average price for a home in Deanwood has increased in recent years. Ms. Chatmon reports that the median income in Deanwood is \$38,000, which would support the ownership of a home that is valued at approximately \$169,000. It is becoming more difficult for low-income persons to purchase homes in Deanwood. It may also become difficult for current homeowners in Deanwood to retain ownership of their homes. As the property values rise in the area, property taxes are rising and therefore, it may not be feasible for many low-income residents to pay their property taxes.

⁸² See Appendix B.

⁸³ See Appendix A.

The creation of a conservation district in Deanwood is not a cure-all that will prevent gentrification or solve existing problems in the area. There are market-driven economic factors at work which will inevitably result in some level of gentrification in Deanwood. While the creation of an historic district or a conservation district may impact the pace and nature of future development, as the experience with conservation districts in Phoenix demonstrates, the creation of a conservation district will not prevent change. However, the additional regulations and protection afforded by a conservation district (or an historic district) could be used to minimize incompatible development and to preserve some level of affordable housing.

D. Regulatory Protection.

In order to protect the historic structures, mitigate the risk of incompatible development and provide funding to provide services and retail and housing grants, additional regulatory controls are needed. The neighborhood of Deanwood could seek historic district designation. However, a conservation district may provide a more suitable regulatory regime.

1. Historic District.

It is likely that Deanwood could obtain historic district designation. The regulations for the Historic Preservation Review Board and the District of Columbia Office of Planning, Section 201 Criteria for Designation in the DC Inventory, (the “Regulations”) provide, in pertinent part, that:

[h]istoric and prehistoric buildings, building interiors, structures, monuments, works of arts or other similar objects, areas, places, sites, neighborhoods, and cultural landscapes are eligible for designation as historic landmarks or historic districts if they possess one or more of the following values or qualities:⁸⁴

- (b) History: They are associated with historical periods, social movements, groups, institutions, achievements, or patterns of growth and change that contributed

⁸⁴ D.C. Mun. Regs. Tit. 10A § 26.201 (2006).

- significantly to the heritage, culture or development of the District of Columbia or the nation.
- (c) Individuals: They are associated with the lives of persons significant to the history of the District of Columbia or the nation.
 - (d) Architecture and Urbanism: They embody the distinguishing characteristics of architectural styles, building types, or methods of construction, or are expressions of landscape architecture, engineering, or urban planning, siting, or design significant to the appearance and development of the District of Columbia or the nation.⁸⁵

Deanwood possesses each of the three values above. The area is associated with the post-civil war period and represents African-American self-reliance after emancipation. There are particular black architects, such as W. Sidney Pittman, that were significant to the area. While the buildings may be simple, they are distinguishable from other areas of Washington because they were designed and built by African-Americans.

Historic district designation could be obtained without the significant resident participation required under most conservation district ordinances. Resident participation and backing would be desired to support compliance with historic district regulations and the legitimacy of the designation. However, an historic district could be established without overcoming hurdles such as resident petitions or polling, since the Regulations allow the Historic Review Board to initiate an historic district designation by directing its staff to prepare an application.⁸⁶

If historic designation were granted, protection of Deanwood structures would begin immediately. There would be a review by the Historic Preservation Review Board, and subsequent approval would be required whenever a permit is sought to demolish an existing building, alter an existing building or construct a new building in Deanwood.⁸⁷ Such review would have the effect of making it difficult to demolish the historical structures in the Deanwood

⁸⁵ *Id.*

⁸⁶ D.C. Mun. Regs. Tit. 10A § 26.207.1 (2006).

survey area. Review would also ensure that alterations, such as additions to existing historical structures, would maintain the integrity of those structures. New construction would also be reviewed in order to protect the area from incompatible development. Deanwood is already experiencing incompatible development on its residential streets in the form of buildings being built that are of inconsistent height, proportion, density, set back and materials.⁸⁸ In addition, some structures are literally being erected illegally in the middle of the night. Historic district designation would likely halt such illegal behavior, because the entire area would be subject to much stricter scrutiny and policing.

As in almost any community, there will be differences of opinion regarding the proper course of future development. Many Deanwood residents would strongly support a historic district designation or a conservation district designation. Others would strongly oppose either such designation. Some may support one designation, but not the other. Many may be concerned about whether the neighborhood would meet the standards the standards set forth in the Regulations. Any effort to create a historic district or a conservation district should begin with a public education program and a series of community forums.

There are a number factors which suggest that an historic district designation may not be appropriate for Deanwood at this time. Historic district designation can result in added costs to residents and property owners. There is an added level of bureaucracy when residents seek to alter their homes because they are required to obtain Historic Preservation Review Board approval. Obtaining such approval may be expensive and difficult to obtain given the high level

⁸⁷ See DC Code § 2-144 §§ (as amended) (2006).

⁸⁸ There are many examples of incompatible development in Deanwood, including those pictured in Appendix B.

of scrutiny of the alteration plans. Obtaining approval may cause construction delays, increased costs, require multiple hearings or changes to architectural plans.

In addition to more obvious alterations to structures, under the Regulations, the following actions would also be subject to review: (i) “installation or replacement of a window, door, siding, roofing, or other exterior building finish;” (ii) “construction or replacement of a retaining wall, fence, deck, patio, garden, storage shed, swimming pool, or other on site feature;” (iii) “installation of air conditioning, mechanical, plumbing, or other equipment;” and (iv) “erection of a flagpole, antenna, satellite dish, or telecommunication tower.”⁸⁹

The Historic Preservation Review Board may require that historically accurate materials for windows, siding, roofing or fences be used. Such a requirement may cause confusion and additional expense. Although it is believed that historically compatible materials (such as windows) may be obtained for comparable prices in middle and upper income neighborhoods, such materials may be relatively expensive in an area like Deanwood where residents tend (by necessity) to be resourceful when it comes making repairs, often obtaining the least costly goods available, whether from scrap yards, second hand sources or large discounters. Furthermore, such individuals may not be able to afford architects or other historic preservation specialists to instruct them on what materials to use or to assist them in the approval process. Given the single family, owner-occupied character of Deanwood and the importance of maintaining a high level of home ownership, if the area was designated as an historic district, the residents would generally not be able to make use of the historic tax credit available for rehabilitation of historic structures for commercial or residential rental uses.

⁸⁹ D.C. Mun. Regs. Tit. 10A § 26.304.1 (2006).

It may be possible to designate Deanwood as an historic district and develop a plan which would allow Deanwood to comply with less rigorous standards than other historic districts in Washington. Such a plan could allow for a meaningful level of protection of historic structures in Deanwood, while at the same time allowing non-compliance with certain historic preservation requirements applicable to other historic districts. This could be accomplished through existing laws, rather than requiring the creation of a new regulatory framework. However, providing relief in Deanwood could set a precedent which property owners in other historic districts would seek to exploit.

2. Conservation District.

A conservation district may be able to provide the protection that is needed in Deanwood without requiring property owners to meet many of the requirements of an historic district. Currently, Washington does not have enabling legislation that would allow for the creation of a conservation district. However, the implementation of such an ordinance may be beneficial to the City. Conservation ordinances can be used for a wide variety of purposes, including the protection of historic structures, the preservation of affordable housing, the protection of neighborhoods from incompatible development and the protection of environmental resources. The Philadelphia ordinance allows for the creation of a conservation district to protect anything that the community would like to protect. Such legislation may provide a valuable tool to complement the use of historic districts to protect different neighborhoods in Washington.

A conservation district law in Washington should be based on the Hybrid Approach. Given the historic nature of Washington, conservation district legislation should protect historic structures from demolition and irreversible alterations and insure that new construction is consistent with the neighborhood. However, the conservation district law should also be geared

toward protecting neighborhood character, targeting necessary services, addressing neighborhood concerns and coordinating these activities with public investment. Washington should look to Philadelphia for a model of how a conservation ordinance should be drafted in Washington. Given the historical similarities and proximity of Philadelphia, as well as existing historic preservation legislation, Philadelphia's ordinance provides a good model for Washington.

a. How a conservation district ordinance could work in Washington.

(1) Purpose; Neighborhood Plan: The ordinance should have a fairly broad purpose. Similar to the Philadelphia ordinance, conservation districts should be available to serve a wide variety of purposes. The purpose section should explicitly (i) discourage the demolition of structures that are of historic character; (ii) discourage alterations to structures (whether or not historic) where such alterations are incompatible with the existing character of the neighborhood; (iii) plan for new commercial and residential infill construction that is compatible with the existing character of a neighborhood; (iv) foster economic development; and (v) provide guidelines to clarify the community's expectations. The ordinance would contemplate the creation of a "Neighborhood Plan" for each conservation district.

(2) Administrative Review Board: Where there is a broad range of areas that conservation district may protect, it may be appropriate to have the Planning Department oversee conservation districts. However, in Washington, it would be appropriate for the Historic Preservation Review Board to have the authority to make a recommendation on any application for a conservation district and review any application for demolition, alteration or new

construction. Such responsibility is most appropriately delegated to the Historic Preservation Review Board given its experience and expertise.⁹⁰

(3) Designation Process: In general, the conservation district designation process should closely resemble the historic district designation process. The conservation district designation would likely require more owner participation than under the historic district designation process, and should probably be similar to the Philadelphia ordinance.⁹¹ The Philadelphia ordinance does not require overwhelming resident support at the outset, but rather gives residents an opportunity to speak out against it. The Washington ordinance should require a petition signed by a significant portion (perhaps 20%) of property owners or a request by a recognized neighborhood association to initiate the designation process. However, if a majority of the owners in the areas file an objection in writing, the district would not be established. In addition, unlike historic districts, an individualized Neighborhood Plan would be developed as part of the designation process. The individualized Neighborhood Plan would provide greater flexibility than is available in historic districts. For example, the plan could exempt certain types of alterations from review or could target specific services for the area.

(4) Actions Subject to Review: The types of actions subject to review could vary depending upon the individual Neighborhood Plan. However, it is imperative that demolition and alterations which would irreversibly alter the character of a building and new construction be reviewed by the Historic Preservation Review Board before the District of Columbia Regulatory Agency may issue a permit.

⁹⁰ Where possible, the review would be conducted based upon an expedited and simplified process and would be performed in the context of the applicable Neighborhood Plan.

⁹¹ Opponents of historic district designation may be inclined to support a conservation designation in order to discourage a possible future historic district designation.

(5) Review Process, Enforcement and Appeals: The review process, enforcement of regulatory requirements and appeals from decisions should all resemble those applicable to historic districts, simplified and expedited where possible. A simplified “minor approval” process would be created which could apply for certain approvals such as alterations which do not irreversibly alter the historic character of a building, alterations to owner-occupied single family homes with values below a certain level (perhaps expressed as a percentage of the District-side median home value) and new construction which meets certain pre-determined criteria regarding height, size, building materials, etc. In addition, a process for periodic reviews and updates of the Neighborhood Plan would be included (this could also serve as a mechanism for the future creation of an historic district).

b. How a conservation district Neighborhood Plan could work in Deanwood.

A conservation district with a well-designed Neighborhood Plan could address many of the problems that confront Deanwood. A Neighborhood Plan for Deanwood should require that: (i) all demolition, alterations which would irreversibly alter the character of a building and new construction within the boundaries of the district be approved by the Historic Preservation Review Board; (ii) the District of Columbia work with residents to improve infrastructure and City services, such as garbage transfer services, policing, lighting, streetscapes and sidewalks; (iii) retail be developed through the District of Columbia Main Street grant program; and (iv) federal and local subsidy programs be used to preserve existing affordable housing and to facilitate development of additional affordable housing.

By requiring that demolition, alterations, and new construction obtain Historic Preservation Review Board approval, there will be protections of the neighborhood similar to those under historic district designation. It is likely, however, that the level of scrutiny applied in

a conservation district will be somewhat less than in an historic district. The focus should be on protecting structures from demolition which are, or could reasonably be expected to become, historic where it is economically feasible to do so and to restrict alterations that would permanently destroy the historic integrity of a structure.

Such standards, while not affording the highest level of protection, could serve as a mechanism to protect historic structures, thereby enhancing the prospects that Deanwood could become a vibrant historic district in the future. If historic structures are demolished or inappropriately altered, the area may forever lose the opportunity to qualify for historic district status at a later date. However, by applying more flexible standards, items such as windows, siding or fencing may be altered without permanently disturbing the historic structure. Records could be kept of the original windows, siding and fencing so that, in the future, if Deanwood became an historic district, the Historic Preservation Review Board could require that future alterations be made so as to maintain the property in accordance with typical historic preservation standards.

Currently, housing is being constructed on vacant lots in Deanwood. Much of the new construction is incompatible with existing structures. Most of the existing structures in the residential area of Deanwood are single family, one and two floor homes. The new housing tends to be multifamily buildings which are taller and of greater density than the surrounding homes. Subjecting new construction to review would provide a means to prevent the development of large incompatible buildings.

In addition to providing historic protections and a means to control incompatible development, the neighborhood should focus on needed infrastructure and services. For example, sidewalks are needed in many of the residential areas. Residents would like a more

efficient means of garbage transfer to prevent garbage piles from accumulating on vacant lots.

Residents would like a greater police presence in order to reduce violent crime and illegal

dumping and enforcement of laws prohibiting construction without building permits.

The development of retail could be encouraged by the City's Main Street grant program.

The DC Main Streets program was created in 2002 to:

support the establishment and implementation of lasting, comprehensive revitalization initiatives in DC's traditional neighborhood business districts. DC Main Streets' goal is to support retail investment in the District through the retention and expansion of existing businesses and the recruitment of new businesses. DC Main Streets provides five years of comprehensive technical and financial assistance to local Main Street programs.”⁹²

This program is currently active in ten neighborhoods including Shaw, H Street, Adams Morgan, Anacostia and Brookland. A comprehensive plan and goals could make Deanwood a viable competitor for these grants. Deanwood is in desperate need of retail. The historical commercial centers of Deanwood look like ghost towns. The revitalization of retail would improve the Deanwood economy and create jobs and social and community centers.

There is a need for additional federally subsidized housing, in the form of tenant based Section 8 vouchers and multifamily housing which could be subsidized through HOPE VI or low-income housing tax credits. Federal subsidies to build additional affordable housing is the most effective way to balance the effects of the inevitable gentrification of Deanwood.

There is a recently constructed HOPE VI project called New East Capitol on the border of Deanwood. Consistent with the HOPE VI program, the District of Columbia Housing Authority (“DCHA”) utilized the existing land and displaced the residents of the old project in

⁹² reStore DC: A Commercial Revitalization Center, *available at* http://www.restoredc.dc.gov/restoredc/cwp/view.asp?a=1407&q=572036&restoreNav_GID=1834 (last visited May 5, 2007).

order to build the new project.⁹³ Residents in the Deanwood area are fearful that DCHA could take similar action with respect to other projects in the area, such as Lincoln Heights, and further displace Deanwood residents. A Neighborhood Plan should address these concerns.

Given the supply of vacant land in Deanwood, a possible solution could involve DCHA purchasing vacant land and building new mixed-income, mixed-use housing and then relocating residents of run down public housing, rather than displacing them during the building process. Solutions require the commitment of the neighborhood and its residents to goals. A conservation district would allow the neighborhood to develop comprehensive plans to facilitate the development of affordable housing and provide the neighborhood with the basis to work with government agencies in Washington.

It has long been the policy of the federal government to encourage home ownership. In fact, home ownership is an integral part of the “American Dream.” Deanwood consists largely of single-family owner occupied dwellings. The property values in Deanwood have gone up over the past few years, and it is expected that they will continue to rise. Deanwood is a logical area for gentrification given its access to the Washington Metro Rail and the availability of land. Current homeowners fear that, as their property values increase, so will their property taxes. As a result, they may no longer be able to afford to live in their homes, which is particularly disheartening for people who live in family homes that were built by their great, great grandparents. The increase in property values also prevents working, but lower income, residents of Washington from purchasing homes of their own. There are currently first time homebuyer programs in Washington, such programs could be targeted to areas like Deanwood.

⁹³ Charlena S. Carney, *Churches Commit to Bringing a New Day to Deanwood*, Washington Post, Apr. 7, 2007, at F1, F9.

IV. Conclusion

There are several reasons why a city like Washington that already has an historic district regulatory regime may benefit through the enactment of conservation district legislation including: (i) the creation of conservation districts which serve to provide important protections and benefits that might not otherwise be available; (ii) owner perception (and perhaps the reality) that a conservation district would result in less burdensome restrictions than those that would be imposed by historic district designation; (iii) conservation districts allow for protections of areas that may not currently qualify under the statute for historic district designation, but may qualify at a later date if the area is properly protected from demolition, alteration and new construction; and (iv) conservation districts may be appropriate for use where the goal is to protect something altogether different than historic structures, such as affordable housing or natural resources.

It would, of course, be possible to amend the existing historic district statute to allow for the waiver or modification of requirements there under in order to accomplish many, if not all, of the same goals that could be met under conservation district legislation. However, by implementing a modified historic district in an area like Deanwood, or other neighborhoods in Washington such as Brookland, there will be a battle of public perception. Residents may still view the regulations as placing an undue burden on their properties. Preservationists will be concerned that other neighborhoods will take advantage of such a waiver and modification process to reduce the restrictions imposed on them. From a political and practical standpoint, it may be better to have a bright line between historic districts and conservation districts so that protection of existing historic districts is not diluted.

Deanwood presents a tough case because, while it likely would qualify for historic district designation, it may not be ready for the regulatory requirements applicable under current

historic preservation law. Placing too high of regulatory standards may cause demolition by neglect as owners struggle financially to maintain their homes. In addition, there may not be the public support behind historic district designation.

It is important to protect the existing historic structures in Deanwood from demolition or alterations that permanently destroy their character. The loss of the historic structures would be damaging to the African-American community and the City of Washington. Deanwood stands as a symbol of self-reliance in the face of social and economic adversity and provides a symbol of African-American architecture and culture. Maintaining the historic structures preserves options for the future and may allow for historic district designation when the neighborhood is ready.

Deanwood is historically a close-knit neighborhood whose residents are self-sufficient and have relied upon themselves for generations. In a time where the City of Washington is undergoing rapid change, it is important to provide the residents of Deanwood with the tools needed to maintain and improve their neighborhood. A conservation district with a well thought out Neighborhood Plan could be such a tool.